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Pogony
Circuit

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-205316

DATE: February 22, 1982

MATTER OF: Mercer Products & Manufacturing Company

DIGEST:

1. Where agency failed to specify required revision of drawing in RFQ or even to determine if requirement was necessary, rejection of one of two quoters for failure to base quote on required drawing leads to conclusion that agency did not make reasonable effort to treat all offerors fairly.
2. Failure of agency to clearly set forth whether it wished F.O.B. origin or F.O.B. destination delivery on RFQ issued under small purchase procedures does not affect award because delivery costs were added to F.O.B. origin quotation and protester easily could have questioned agency regarding its delivery requirements.

Mercer Products & Manufacturing Company protests the award of a purchase order issued by the Defense Industrial Supply Center (DISC), Philadelphia, Pennsylvania to any other firm under request for quotations (RFQ) DLA500-81-Q-ACD3. The protester alleges that its quotation for a quantity of "sleeve bushings" was improperly rejected and that the agency proposes to accept a quotation which has delivery terms inconsistent with those in the RFQ. For the reasons stated below, we sustain the protest.

The RFQ was issued pursuant to the small purchase procedures of Defense Acquisition Regulation § 3-600 et seq. and identified the item as National Stock Number 3120-01-024-8531, Boeing Company part number 66-11297. Two quotations were received and Mercer, which quoted on

an F.O.B. destination basis, was the second low quoter while the low quoter proposed on an F.O.B. origin basis. At the Government's request, Mercer, an approved source for this item, included with its quotation a copy of the Boeing Company drawing which it proposed to use in the manufacture of the item. The drawing provided was designated "Revision B." Mercer believed this revision to be the current drawing since the Government owned all data rights to the item and previously had furnished the drawing to Mercer. The agency, in rejecting Mercer's quotation, simply returned this drawing with the unsigned notation, "Sorry, wrong revision." Mercer asserts that if "Revision C" is material, the agency had a duty to furnish it to the company.

At the outset, the agency argues that Mercer's protest should not be considered by our Office because the protester did not submit the low quote and thus would not be eligible for award no matter which revision of the drawing it used for its quote. We disagree. The agency is not able to explain the nature of the differences, if any, between parts produced under "Revision B" or "Revision C" of the Boeing drawing. Thus, it is possible that Mercer's use of "Revision B" could have resulted in its quoting a cost higher than it would have under "Revision C." Therefore, we believe the fact that Mercer did not submit the low quote does not require dismissal of the protest.

It is undisputed that the solicitation specified no particular revision, yet Mercer's quotation was rejected because a "Revision C" drawing did not accompany it. The agency acknowledges that it did not even perform a cursory technical review of "Revision B" and "Revision C" to determine what effect "Revision C" may have had on part number 66-11297 even though revisions often merely update title and number or improve the legibility of the drawing. Indeed, as mentioned above, the record is unclear whether the agency possesses the "Revision C" drawing at all. We do not believe an agency can automatically reject a quotation from one of two competitors under these circumstances and still be viewed as

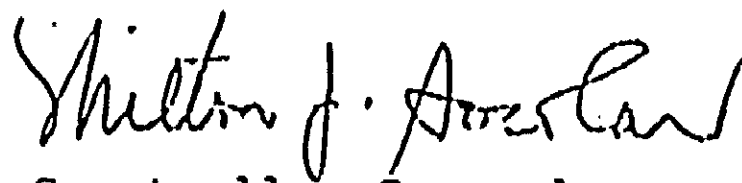
making a reasonable effort to treat offerors fairly. If the agency in fact requires quotes based on "Revision C," it should have so specified in its RFQ so that all potential quoters would have been aware of that fact. See Sam L. Huddleston & Associates, Inc., 57 Comp. Gen. 489 (1978), 78-1 CPD 398.

Mercer also complains that the low quoter was permitted to submit an offer on an F.O.B. origin basis while it was required to offer on an F.O.B. destination basis. The protester maintains its quote would have been lower had it known it could submit an F.O.B. origin quotation. The RFQ contained conflicting information as to the delivery terms required. On page one it indicated that quotes should be submitted on an F.O.B. destination basis, while on page two the relevant provision could be read as permitting delivery on either an F.O.B. origin or F.O.B. destination basis.

While the RFQ should have been more precise, no competitive prejudice resulted. Transportation costs were added to the low quoter's price, so that quotes were not evaluated on an unequal basis in this respect. Moreover, given the confusing RFQ provisions, Mercer should have queried the agency about its delivery requirements.

In light of our conclusion regarding the "Revision C" requirement, however, we are recommending that the requirements be resolicited unless a technical review shows that "Revision B" and "Revision C" call for the identical part with no changes to the agency's requirements effected by the latter drawing. If the revisions make no difference, award may be made under the current RFQ to the quoter offering the most advantageous terms to the Government, price and other factors considered.

The protest is sustained.

for 
Comptroller General
of the United States